

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 16 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0115-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MIGUEL ANGEL ROSAS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20023077

Honorable Michael Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Miguel Angel Rosas

Post, TX
In Propria Persona

B R A M M E R, Judge.

¶1 Pursuant to a plea agreement, Miguel Angel Rosas was convicted of possession of a narcotic drug for sale. He was sentenced to a mitigated prison term of four years. At the same time, he was sentenced in CR20074779 to the presumptive prison term of 2.5 years for a conviction of solicitation to transport marijuana for sale.

The trial court ordered these sentences to be served concurrently with each other but consecutively to sentences that had been imposed in two federal matters.

¶2 Rosas filed a notice and petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., alleging he had not knowingly, intelligently and voluntarily given up his right to a trial and asserting a claim of ineffective assistance of counsel based on counsel's advice that he withdraw his motion to vacate the plea agreement because counsel believed the court would order Rosas's state sentences to be served concurrently with his sentences in the federal matters. The court denied relief without an evidentiary hearing, and this petition for review followed. Absent a clear abuse of discretion, we will not disturb a trial court's ruling. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶3 In order to establish a colorable claim of ineffective assistance of counsel, a defendant must show counsel's performance was deficient, based on prevailing professional norms, and prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687-88, 692 (1984). To demonstrate the requisite prejudice, the defendant must establish there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A colorable claim entitling the defendant to an evidentiary hearing is one which, if taken as true, "might have changed the outcome." *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). Like the ultimate decision whether to grant or deny post-conviction relief, whether a claim is colorable, warranting an evidentiary hearing "is, to some extent, a discretionary decision for the trial court." *State v. D'Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988).

¶4 Here, the trial court denied the petition in a thorough, well-reasoned minute-entry order that correctly identified and resolved Rosas's ineffective assistance claim applying the above legal principles. Because Rosas's claim was based on counsel's withdrawal of Rosas's motion to vacate his plea, the court also addressed whether the motion would have been granted, finding Rosas had not been entitled to such relief. And, the court addressed Rosas's argument that the court had failed to explain sufficiently the constitutional rights Rosas was giving up and other collateral consequences of his guilty plea. Because we see no purpose in repeating or embellishing the trial court's correct ruling here, we adopt it, *see State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993), and although we grant Rosas's petition for review, we deny relief.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge